

REFERENCE TITLE: **carrying firearms; exceptions**

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2628

Introduced by
Representatives Pearce, Barnes, McClure, Nelson: Biggs, Burges, Clark,
Crump, Farnsworth, Groe, McComish, Nichols, Tobin, Weiers JP, Senators
Gould, Harper, Johnson

AN ACT

**AMENDING SECTIONS 13-3101 AND 13-3102, ARIZONA REVISED STATUTES; AMENDING
TITLE 13, CHAPTER 31, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-3114;
RELATING TO WEAPONS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-3101, Arizona Revised Statutes, is amended to
3 read:

4 13-3101. Definitions

5 A. In this chapter, unless the context otherwise requires:

6 1. "Deadly weapon" means anything that is designed for lethal
7 use. The term includes a firearm.

8 2. "Deface" means to remove, alter or destroy the manufacturer's
9 serial number.

10 3. "Explosive" means any dynamite, nitroglycerine, black powder or
11 other similar explosive material, including plastic explosives. Explosive
12 does not include ammunition or ammunition components such as primers,
13 percussion caps, smokeless powder, black powder and black powder substitutes
14 used for hand loading purposes.

15 4. "Firearm" means any loaded or unloaded handgun, pistol, revolver,
16 rifle, shotgun or other weapon that will expel, is designed to expel or may
17 readily be converted to expel a projectile by the action of an explosive.
18 Firearm does not include a firearm in permanently inoperable condition.

19 5. "Occupied structure" means any building, object, vehicle,
20 watercraft, aircraft or place with sides and a floor that is separately
21 securable from any other structure attached to it, that is used for lodging,
22 business, transportation, recreation or storage and in which one or more
23 human beings either are or are likely to be present or so near as to be in
24 equivalent danger at the time the discharge of a firearm occurs. Occupied
25 structure includes any dwelling house, whether occupied, unoccupied or
26 vacant.

27 6. "Prohibited possessor" means any person:

28 (a) Who has been found to constitute a danger to himself or to others
29 pursuant to court order under section 36-540, and whose court ordered
30 treatment has not been terminated by court order.

31 (b) Who has been convicted within or without this state of a felony or
32 who has been adjudicated delinquent for a felony and whose civil right to
33 possess or carry a gun or firearm has not been restored.

34 (c) Who is at the time of possession serving a term of imprisonment in
35 any correctional or detention facility.

36 (d) Who is at the time of possession serving a term of probation
37 pursuant to a conviction for a domestic violence offense as defined in
38 section 13-3601 or a felony offense, parole, community supervision, work
39 furlough, home arrest or release on any other basis or who is serving a term
40 of probation or parole pursuant to the interstate compact under title 31,
41 chapter 3, article 4.

42 (e) Who is ~~a prohibited possessor under 18 United States Code section~~
43 ~~922(g)(5), except as provided by 18 United States Code section 922(y).~~ AN
44 UNDOCUMENTED ALIEN OR A NONIMMIGRANT ALIEN TRAVELING WITH OR WITHOUT
45 DOCUMENTATION IN THIS STATE FOR BUSINESS OR PLEASURE OR WHO IS STUDYING IN

1 THIS STATE AND WHO MAINTAINS A FOREIGN RESIDENCE ABROAD. THIS SUBDIVISION
2 DOES NOT APPLY TO:

3 (i) NONIMMIGRANT ALIENS WHO POSSESS A VALID HUNTING LICENSE OR PERMIT
4 THAT IS LAWFULLY ISSUED BY A STATE IN THE UNITED STATES.

5 (ii) NONIMMIGRANT ALIENS WHO ENTER THE UNITED STATES TO PARTICIPATE IN
6 A COMPETITIVE TARGET SHOOTING EVENT OR TO DISPLAY FIREARMS AT A SPORTS OR
7 HUNTING TRADE SHOW THAT IS SPONSORED BY A NATIONAL, STATE OR LOCAL FIREARMS
8 TRADE ORGANIZATION DEVOTED TO THE COMPETITIVE USE OR OTHER SPORTING USE OF
9 FIREARMS.

10 (iii) CERTAIN DIPLOMATS.

11 (iv) OFFICIALS OF FOREIGN GOVERNMENTS OR DISTINGUISHED FOREIGN
12 VISITORS WHO ARE DESIGNATED BY THE UNITED STATES DEPARTMENT OF STATE.

13 (v) FOREIGN LAW ENFORCEMENT OFFICERS OF FRIENDLY FOREIGN GOVERNMENTS
14 WHO ENTER THE UNITED STATES ON OFFICIAL LAW ENFORCEMENT BUSINESS.

15 (vi) PERSONS WHO HAVE RECEIVED A WAIVER FROM THE UNITED STATES
16 ATTORNEY GENERAL.

17 7. "Prohibited weapon" means, but does not include fireworks imported,
18 distributed or used in compliance with state laws or local ordinances, any
19 propellant, propellant actuated devices or propellant actuated industrial
20 tools that are manufactured, imported or distributed for their intended
21 purposes or a device that is commercially manufactured primarily for the
22 purpose of illumination, including any of the following:

23 (a) Explosive, incendiary or poison gas:

24 (i) Bomb.

25 (ii) Grenade.

26 (iii) Rocket having a propellant charge of more than four ounces.

27 (iv) Mine.

28 (b) Device that is designed, made or adapted to muffle the report of a
29 firearm.

30 (c) Firearm that is capable of shooting more than one shot
31 automatically, without manual reloading, by a single function of the trigger.

32 (d) Rifle with a barrel length of less than sixteen inches, or shotgun
33 with a barrel length of less than eighteen inches, or any firearm that is
34 made from a rifle or shotgun and that, as modified, has an overall length of
35 less than twenty-six inches.

36 (e) Instrument, including a nunchaku, that consists of two or more
37 sticks, clubs, bars or rods to be used as handles, connected by a rope, cord,
38 wire or chain, in the design of a weapon used in connection with the practice
39 of a system of self-defense.

40 (f) Breakable container that contains a flammable liquid with a flash
41 point of one hundred fifty degrees Fahrenheit or less and that has a wick or
42 similar device capable of being ignited.

43 (g) Chemical or combination of chemicals, compounds or materials,
44 including dry ice, that is placed in a sealed or unsealed container for the

1 purpose of generating a gas to cause a mechanical failure, rupture or
2 bursting of the container.

3 (h) Combination of parts or materials that is designed and intended
4 for use in making or converting a device into an item set forth in
5 subdivision (a) or (f) of this paragraph.

6 B. The items set forth in subsection A, paragraph 7, subdivisions (a),
7 (b), (c) and (d) of this section do not include any firearms or devices that
8 are registered in the national firearms registry and transfer records of the
9 United States treasury department or any firearm that has been classified as
10 a curio or relic by the United States treasury department.

11 Sec. 2. Section 13-3102, Arizona Revised Statutes, is amended to read:

12 13-3102. Misconduct involving weapons; defenses;
13 classification; definitions

14 A. A person commits misconduct involving weapons by knowingly:

15 1. Carrying a deadly weapon without a permit pursuant to section
16 13-3112 except a pocket knife concealed on his person; or

17 2. Carrying a deadly weapon without a permit pursuant to section
18 13-3112 concealed within immediate control of any person in or on a means of
19 transportation; or

20 3. Manufacturing, possessing, transporting, selling or transferring a
21 prohibited weapon; or

22 4. Possessing a deadly weapon or prohibited weapon if such person is a
23 prohibited possessor; or

24 5. Selling or transferring a deadly weapon to a prohibited possessor;
25 or

26 6. Defacing a deadly weapon; or

27 7. Possessing a defaced deadly weapon knowing the deadly weapon was
28 defaced; or

29 8. Using or possessing a deadly weapon during the commission of any
30 felony offense included in chapter 34 of this title; or

31 9. Discharging a firearm at an occupied structure in order to assist,
32 promote or further the interests of a criminal street gang, a criminal
33 syndicate or a racketeering enterprise; or

34 10. Unless specifically authorized by law, entering any public
35 establishment or attending any public event and carrying a deadly weapon on
36 his person after a reasonable request by the operator of the establishment or
37 the sponsor of the event or the sponsor's agent to remove his weapon and
38 place it in the custody of the operator of the establishment or the sponsor
39 of the event for temporary and secure storage of the weapon pursuant to
40 section 13-3102.01; or

41 11. Unless specifically authorized by law, entering an election polling
42 place on the day of any election carrying a deadly weapon; or

43 12. Possessing a deadly weapon on school grounds; or

1 13. Unless specifically authorized by law, entering a nuclear or
2 hydroelectric generating station carrying a deadly weapon on his person or
3 within the immediate control of any person; or

4 14. Supplying, selling or giving possession or control of a firearm to
5 another person if the person knows or has reason to know that the other
6 person would use the firearm in the commission of any felony; or

7 15. Using, possessing or exercising control over a deadly weapon in
8 furtherance of any act of terrorism as defined in section 13-2301 or
9 possessing or exercising control over a deadly weapon knowing or having
10 reason to know that it will be used to facilitate any act of terrorism as
11 defined in section 13-2301.

12 B. Subsection A, paragraph 1 of this section shall not apply to a
13 person in his dwelling, on his business premises or on real property owned or
14 leased by that person.

15 C. Subsection A, paragraphs 1, 2, 3, 7, 10, 11, 12 and 13 of this
16 section shall not apply to:

17 1. A peace officer or any person summoned by any peace officer to
18 assist and while actually assisting in the performance of official duties; or

19 2. A member of the military forces of the United States or of any
20 state of the United States in the performance of official duties; or

21 3. A warden, deputy warden or correctional officer of the state
22 department of corrections; or

23 4. A person specifically licensed, authorized or permitted pursuant to
24 a statute of this state or of the United States.

25 D. Subsection A, paragraphs 3 and 7 of this section shall not apply
26 to:

27 1. The possessing, transporting, selling or transferring of weapons by
28 a museum as a part of its collection or an educational institution for
29 educational purposes or by an authorized employee of such museum or
30 institution, if:

31 (a) Such museum or institution is operated by the United States or
32 this state or a political subdivision of this state, or by an organization
33 described in 26 United States Code section 170(c) as a recipient of a
34 charitable contribution; and

35 (b) Reasonable precautions are taken with respect to theft or misuse
36 of such material.

37 2. The regular and lawful transporting as merchandise; or

38 3. Acquisition by a person by operation of law such as by gift, devise
39 or descent or in a fiduciary capacity as a recipient of the property or
40 former property of an insolvent, incapacitated or deceased person.

41 E. Subsection A, paragraph 3 of this section shall not apply to the
42 merchandise of an authorized manufacturer of or dealer in prohibited weapons,
43 when such material is intended to be manufactured, possessed, transported,
44 sold or transferred solely for or to a dealer, a regularly constituted or
45 appointed state, county or municipal police department or police officer, a

1 detention facility, the military service of this or another state or the
 2 United States, a museum or educational institution or a person specifically
 3 licensed or permitted pursuant to federal or state law.

4 F. Subsection A, paragraph 1 of this section shall not apply to a
 5 weapon or weapons THAT ARE carried in a ~~belt holster which~~ MANNER WHERE ANY
 6 PORTION OF THE WEAPON OR A holster IN WHICH THE WEAPON IS CARRIED is ~~wholly~~
 7 ~~or partially~~ visible, ~~or~~ THAT ARE carried in a scabbard or case designed for
 8 carrying weapons which AND ANY PORTION OF THE WEAPON, scabbard or case is
 9 ~~wholly or partially~~ visible or THAT ARE carried in luggage. Subsection A,
 10 paragraph 2 of this section shall not apply to a weapon or weapons carried in
 11 a case, holster, scabbard, pack or luggage that is carried within a means of
 12 transportation or within a storage compartment, map pocket, trunk or glove
 13 compartment of a means of transportation.

14 G. Subsection A, paragraph 10 of this section shall not apply to
 15 shooting ranges or shooting events, hunting areas or similar locations or
 16 activities.

17 H. Subsection A, paragraph 3 of this section shall not apply to a
 18 weapon described in section 13-3101, subsection A, paragraph 7, subdivision
 19 (e), if such weapon is possessed for the purposes of preparing for,
 20 conducting or participating in lawful exhibitions, demonstrations, contests
 21 or athletic events involving the use of such weapon. Subsection A, paragraph
 22 12 of this section shall not apply to a weapon if such weapon is possessed
 23 for the purposes of preparing for, conducting or participating in hunter or
 24 firearm safety courses.

25 I. Subsection A, paragraph 12 of this section shall not apply to the
 26 possession of a:

27 1. Firearm that is not loaded and that is carried within a means of
 28 transportation under the control of an adult provided that if the adult
 29 leaves the means of transportation the firearm shall not be visible from the
 30 outside of the means of transportation and the means of transportation shall
 31 be locked.

32 2. Firearm for use on the school grounds in a program approved by a
 33 school.

34 J. SUBSECTION A, PARAGRAPHS 10, 11 AND 12 OF THIS SECTION SHALL NOT
 35 APPLY TO A PERSON WHO POSSESSES A PERMIT ISSUED PURSUANT TO SECTION 13-3112.

36 K. A PERSON WHO IS A PROHIBITED POSSESSOR AS DEFINED IN SECTION
 37 13-3101, SUBSECTION A, PARAGRAPH 6, SUBDIVISION (e) AND WHO IS CONVICTED OF A
 38 VIOLATION OF SUBSECTION A, PARAGRAPH 4 OF THIS SECTION IS NOT ELIGIBLE FOR
 39 SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY
 40 BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B
 41 UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED, THE PERSON IS
 42 ELIGIBLE FOR RELEASE PURSUANT TO SECTION 41-1604.07 OR THE SENTENCE IS
 43 COMMUTED. THE PERSON SHALL BE RELEASED FROM CONFINEMENT ONLY TO THE UNITED
 44 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT.

~~J.~~ L. The operator of the establishment or the sponsor of the event or the employee of the operator or sponsor or the agent of the sponsor, including a public entity or public employee, is not liable for acts or omissions pursuant to subsection A, paragraph 10 of this section unless the operator, sponsor, employee or agent intended to cause injury or was grossly negligent.

~~K.~~ M. Misconduct involving weapons under subsection A, paragraph 9, 14 or 15 of this section is a class 3 felony. Misconduct involving weapons under subsection A, paragraph 3, 4, 8 or 13 of this section is a class 4 felony. Misconduct involving weapons under subsection A, paragraph 12 of this section is a class 1 misdemeanor unless the violation occurs in connection with conduct ~~which~~ THAT violates the provisions of section 13-2308, subsection A, paragraph 5, section 13-2312, subsection C, section 13-3409 or section 13-3411, in which case the offense is a class 6 felony. Misconduct involving weapons under subsection A, paragraph 5, 6 or 7 of this section is a class 6 felony. Misconduct involving weapons under subsection A, paragraph 1, 2, 10 or 11 of this section is a class 1 misdemeanor.

~~L.~~ N. For the purposes of this section:

1. "Public establishment" means a structure, vehicle or craft that is owned, leased or operated by this state or a political subdivision of this state.

2. "Public event" means a specifically named or sponsored event of limited duration THAT IS either conducted by a public entity or conducted by a private entity with a permit or license granted by a public entity. Public event does not include an unsponsored gathering of people in a public place.

3. "School" means a public or nonpublic kindergarten program, common school or high school.

4. "School grounds" means in, or on the grounds of, a school.

Sec. 3. Title 13, chapter 31, Arizona Revised Statutes, is amended by adding section 13-3114, to read:

13-3114. Carrying of firearms by permit holders; exceptions

A. NOTWITHSTANDING ANY OTHER LAW AND EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A PERSON WHO POSSESSES A CONCEALED WEAPONS PERMIT PURSUANT TO SECTION 13-3112 SHALL NOT BE PROHIBITED FROM CARRYING A FIREARM.

B. A PERSON WHO POSSESSES A CONCEALED WEAPONS PERMIT PURSUANT TO SECTION 13-3112 MAY BE PROHIBITED FROM CARRYING A FIREARM AS FOLLOWS:

1. IN A JAIL, CORRECTIONAL FACILITY OR JUVENILE DETENTION FACILITY.

2. BY ORDER OF:

(a) THE PRESIDING JUDGE OR JUSTICE WHEN ATTENDING ANY COURT THAT IS ESTABLISHED PURSUANT TO THE CONSTITUTION OF THIS STATE OR TITLE 12, EXCEPT IF THE PERSON IS PROVIDING COURT SECURITY OR RESPONDING TO AN EMERGENCY.

(b) A JUSTICE COURT WHEN ATTENDING THE JUSTICE COURT, EXCEPT IF THE PERSON IS PROVIDING COURT SECURITY OR RESPONDING TO AN EMERGENCY.

(c) A MUNICIPAL COURT WHEN ATTENDING THE MUNICIPAL COURT, EXCEPT IF THE PERSON IS PROVIDING COURT SECURITY OR RESPONDING TO AN EMERGENCY.

1 3. WHEN IN A SECURED POLICE FACILITY. FOR THE PURPOSES OF THIS
2 PARAGRAPH, "SECURED POLICE FACILITY" MEANS A BUILDING OR STRUCTURE THAT IS
3 USED PRIMARILY BY A PUBLIC AGENCY AND THAT IS NOT ACCESSIBLE TO THE GENERAL
4 PUBLIC EXCEPT BY CONTROLLED ACCESS.

5 4. WHEN CONSUMING ALCOHOL AT A LICENSED LIQUOR ESTABLISHMENT OPERATED
6 BY THIS STATE, A COUNTY, A CITY OR TOWN OR ANY OTHER POLITICAL SUBDIVISION OF
7 THIS STATE.

8 5. IN A LOCATION PROHIBITED BY FEDERAL LAW.

9 6. PURSUANT TO COURT ORDER.

10 7. PURSUANT TO ANY STATE OR FEDERAL LAW THAT MAKES THE PERSON A
11 PROHIBITED POSSESSOR.

12 C. THIS SECTION DOES NOT ESTABLISH ANY CIVIL LIABILITY FOR ACTING OR
13 FAILING TO ACT.